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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. —

A. HOWARD MYERS, INDIVIDUALLY AND AS ACTING REGIONAL DIRECTOR FOR THE FIRST REGION, NATIONAL LABOR RELATIONS BOARD, AND AS THE NATIONAL LABOR RELATIONS BOARD; EDMUND J. BLAKE, INDIVIDUALLY AND AS REGIONAL ATTORNEY FOR THE FIRST REGION, NATIONAL LABOR RELATIONS BOARD, AND AS THE NATIONAL LABOR RELATIONS BOARD; AND DANIEL M. LYONS, INDIVIDUALLY AND AS TRIAL EXAMINER OF THE NATIONAL LABOR RELATIONS BOARD, DESIGNATED OR TO BE DESIGNATED BY THE NATIONAL LABOR RELATIONS BOARD, AND AS THE NATIONAL LABOR RELATIONS BOARD, PETITIONERS

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

No. —

A. HOWARD MYERS, EDMUND J. BLAKE, AND DANIEL M. LYONS, INDIVIDUALLY AND AS THE NATIONAL LABOR RELATIONS BOARD, PETITIONERS

v.

CHARLES MACKENZIE, INDIVIDUALLY AND AS CHAIRMAN, JAMES E. MANNING, INDIVIDUALLY AND AS

VICE-CHAIRMAN, THOMAS E. BARKER, INDIVIDUALLY AND AS SECRETARY OF THE REPRESENTATION OF EMPLOYEES IN THE FORE RIVER PLANT OF THE BETHLEHEM SHIPBUILDING CORPORATION, LTD.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General, on behalf of the officers of the National Labor Relations Board, prays that writs of certiorari issue to review the decrees of the United States Circuit Court of Appeals for the First Circuit entered in the above causes on February 12, 1937 (R. 232), affirming the decrees of the United States District Court for the District of Massachusetts (R. 112–116, 220–221), granting temporary injunctions against the conduct of a hearing and the taking of other proceedings pursuant to the National Labor Relations Act.

OPINIONS BELOW

The opinions of the District Court (R. 117, 222) are unreported, although the opinion of the District Court upon petitioners' motion to dismiss, not involved in this appeal, is reported in 15 F. Supp. 915. The original opinion of the Circuit Court of Appeals for the First Circuit (R. 229) is reported in 88 F. (2d) 154; the opinion denying leave to file a second petition for rehearing (R. 242) is not yet reported.

JURISDICTION

The decrees of the Circuit Court of Appeals were entered on February 12, 1937 (R. 232). A petition for rehearing (R. 232) was denied on April 5, 1937 (R. 236), and leave to file a second petition for rehearing (R. 236) was denied on May 13, 1937 (R. 243). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, notwithstanding the procedure and remedies provided in the National Labor Relations Act, the District Court possessed jurisdiction to grant equitable relief by injunction against the conduct of a hearing and other proceedings which had been or might be undertaken by the National Labor Relations Board pursuant to that Act.

STATUTE AND REGULATIONS INVOLVED

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*) appears in the record (pp. 17–27 of pamphlet following R. 214). The applicable rules and regulations made and published by the Board pursuant thereto appear in the record (pamphlet following R. 214).

STATEMENT

On April 13, 1936, the National Labor Relations Board, through its Regional Director, petitioner A.

Howard Myers, filed a complaint against the Bethlehem Shipbuilding Corporation, Ltd., and gave notice of a hearing pursuant to Section 10 (b) of the National Labor Relations Act (R. 31–35). The complaint alleged that the company, a Delaware corporation, had dominated and interfered with the formation and administration of a labor organization, known as the Plan of Representation of Employees, in its plant at Fore River, Massachusetts, and had contributed financial and other support to it; and had thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (2), and Section 2, subsections (6) and (7) of the National Labor Relations Act. On April 27, 1936, the respondent, Bethlehem Shipbuilding Corporation, Ltd., filed a bill of complaint in the District Court for the District of Massachusetts against the Board's Regional Director, Regional Attorney, and Trial Examiner, praying for a temporary and permanent injunction against the holding of the scheduled hearing or the taking of further proceedings under the Act, and also praying for a declaratory judgment. The bill alleged that the Act was unconstitutional in various respects, and that the holding of the hearing and the taking of further proceedings would cause the company irreparable damage by putting it to inconvenience and expense, injuring its good will, requiring the production of witnesses and business records, and disturbing harmonious relations with its employees. (R. 1–30.) On May

4, 1936, certain employees at the Fore River plant, individually and as officers of the Plan of Employee Representation involved, filed a bill (R. 146) and on May 7, filed a substituted bill (R. 151–166), praying for similar relief and on substantially the same grounds.

The petitioners A. Howard Myers and Edmund J. Blake who alone were personally served within the District of Massachusetts (R. 58, 147–148), moved to dismiss the bills (R. 60–65, 192–197), filed returns to the rules to show cause why temporary injunctions should not issue (R. 66–80, 197–213), and also moved to quash the subpoenas in so far as the individual petitioners were designated therein "as the National Labor Relations Board" (R. 81–82, 191–192). On May 28, 1936, the District Court entered interlocutory injunctions against the conduct of hearings and the taking of further proceedings until final hearing or until the injunctions were dissolved by order of the court if the motions to dismiss were subsequently granted (R. 112–116, 220–221). The District Court found that all the facts alleged in the bills of complaint were true, that certain subpoenas had been issued, and that it did not appear that any damage, inconvenience, or loss of rights would be suffered by any person if the hearing were postponed pending the decision on the motions to dismiss (R. 111, 219). It concluded as a matter of law that there was grave doubt whether the Act was not wholly unconstitutional and void, that the

plaintiffs would suffer irreparable damage of the kinds alleged in the bills of complaint if the hearing were held or if further proceedings were taken, and that the court was not then able to conclude that the plaintiffs had a plain, adequate, and complete remedy at law (R. 112, 219). Thereafter, on July 22, 1936, the District Court overruled the motions to dismiss (R. 118–135).

On appeal by the petitioners to the Circuit Court of Appeals for the First Circuit from the temporary injunction orders of the District Court, these orders were affirmed on February 12, 1937 (R. 229–232). On April 5, 1937, the court denied a petition for rehearing (R. 236), and on May 13, 1937, denied (R. 243) petitioners' motion for leave to file a second petition for rehearing (R. 236), based upon the supervening decisions of this Court on April 12, 1937. (*Associated Press* v. *National Labor Relations Board,* No. 365; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* No. 419; *National Labor Relations Board* v. *Fruehauf Trailer Co.,* No. 420; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.,* No. 422; *Washington, Virginia and Maryland Coach Co.* v. *National Labor Relations Board,* No. 469.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the District Court had jurisdiction to grant an injunction against the conduct

of a hearing and the taking of other proceedings under the National Labor Relations Act;

2. In holding that the respondents would suffer irreparable injury cognizable in equity from the conduct of a hearing and the taking of further proceedings under the terms of the National Labor Relations Act;

3. In failing to hold that exclusive jurisdiction to review the action of the National Labor Relations Board, including all questions of the jurisdiction of the Board and the regularity of its proceedings, is vested in the appropriate United States Circuit Court of Appeals, upon the administrative record, findings, and order, in accordance with the terms of the National Labor Relations Act;

4. In failing to hold that the damage relied upon in the bills of complaint is not irreparable damage cognizable in equity;

5. In failing to hold that the respondents had a plain and adequate remedy under the terms of the National Labor Relations Act;

6. In failing to hold that the District Court had no jurisdiction to restrain the conduct of a hearing and the taking of other proceedings under the terms of the National Labor Relations Act;

7. In holding that the Board was probably attempting to act on a complaint not within its jurisdiction;

8. In affirming the decrees of the District Court.

REASONS FOR GRANTING THE WRITS

1. The decrees of the Circuit Court of Appeals are not in harmony with the precedents established by this Court.

While we believe the allegations of the Board's complaint (pars. 1, 2, 6, 8, R. 31–34) set forth a case well within the Board's jurisdiction, as defined in the recent decisions of this Court (*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.; National Labor Relations Board* v. *Fruehauf Trailer Co.; National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, all *supra*), the fundamental question here presented is one of equity jurisdiction. The Act provides a plain and adequate remedy in the appropriate court for review of any order which the Board may make after due notice and hearing. Only when sustained by the court may the Board's order be enforced. Such review would encompass the various issues of fact and law attempted to be raised in the bills of complaint herein, including "the jurisdiction of the Board", "the regularity of its proceedings", and "all questions of constitutional right or statutory authority." The procedural provisions afford "adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra*, p. 20. Consequently, the District Court had no

jurisdiction to enjoin the conduct of a hearing or the taking of further proceedings by the Board under the Act, and the court below should have reversed the decrees of the District Court and directed the dismissal of the bills upon that fundamental ground. *Metropolitan Co.* v. *Kaw Valley District,* 223 U. S. 519, 523; *Lyons* v. *Eagle-Picher Lead Co.,* decided May 27, 1937 (C. C. A. 10th).

All the contentions raised in the bills of complaint herein, including the various claims of alleged irreparable damage, were rejected in numerous decisions of other Circuits which this Court repeatedly declined to review on writs of certiorari at the last term, both prior and subsequent to the decision in the *Jones & Laughlin* case. See *Bradley Lumber Co.* v. *National Labor Relations Board,* 84 F. (2d) 97 (C. C. A. 5th), certiorari denied, October 12, 1936, No. 153; *Heller Brothers Co.* v. *Lind,* and six other cases, 86 F. (2d) 862 (App. D. C.), certiorari denied, March 15, 1937, Nos. 704–710; *Hatfield Wire & Cable Co.* v. *Herrick,* decided November 23, 1936 (App. D. C.), certiorari denied, March 15, 1937, No. 744; *Clark* v. *Marathon Electric Co.,* 88 F. (2d) 59 (C. C. A. 7th), certiorari denied, April 5, 1937, No. 752; *Elliott* v. *El Paso Electric Co.* and *Elliott* v. *Perrin et al.,* 88 F. (2d) 505 (C. C. A. 5th), certiorari denied, June 1, 1937, Nos. 1017, 1018; *Beman* v. *Independent Workers of Clayton Mark & Co.,* 88 F. (2d) 59 (C. C. A. 7th), certiorari denied, June 1, 1937, No. 956. The holding in the *Jones & Laughlin* case, and the dis-

positions of writs of certiorari to review the denial of injunctive relief under this Act, accord with the law as to equity jurisdiction long since established by this Court in analogous situations.[1]

2. The decrees of the Circuit Court of Appeals are in conflict with the latest decisions of every other Circuit which has passed on the question here presented.

Even prior to the five decisions of this Court on April 12, 1937, sustaining the validity of the Act and the appropriateness of its procedural machinery in all respects material here, the Circuit Courts of Appeals for the Second, Fifth, and Seventh Circuits, and the United States Court of Appeals for the District of Columbia, had held broadly that the District Courts were without jurisdiction to restrain hearings and other proceedings under the Act (see cases cited *supra*, p. 9; ***E. I. Dupont De Nemours Co.*** v. ***Boland,*** and three other cases, 85 F. (2d) 12, 15, 16 (C. C. A. 2d)); and the Circuit Courts of Appeals for the Sixth and Ninth Circuits had indicated a similar view in denying temporary injunctions pending appeal. ***Bemis Bag Co.*** v. ***Feidelson,*** Feb. 6, 1936 (C. C. A. 6th); ***Carlisle Lumber Co.*** v. ***Hope,*** 83 F. (2d) 92

[1] ***Spielman Motor Sales Co.*** v. ***Dodge,*** 295 U. S. 89; ***Federal Trade Commission*** v. ***Claire Furnace Co.,*** 274 U. S. 160; ***United States*** v. ***Los Angeles R. R. Co.,*** 273 U. S. 299; ***United States*** v. ***Illinois Central R. R. Co.,*** 244 U. S. 82; ***Anniston Manufacturing Co.*** v. ***Davis,*** No. 667, October Term, 1936, decided May 17, 1937.

(C. C. A. 9th), appeal dismissed, 85 F. (2d) 1010 (C. C. A. 9th). Subsequent to this Court's decisions of April 12, 1937, the Circuit Courts of Appeals for the Eighth and Tenth Circuits have likewise held that such bills for injunction should be dismissed for failure to follow the valid statutory procedure. *Pratt* v. *Oberman & Co.*, decided May 5, 1937 (C. C. A. 8th); *Lyons* v. *Eagle-Picher Lead Co.*, decided May 27, 1937 (C. C. A. 10th). See also *Bowen* v. *James Vernor Co.*, decided May 13, 1937 (C. C. A. 6th). Various decisions in the Fifth, Seventh, Eighth, and Tenth Circuits are squarely in conflict with the decrees at bar, in that they entailed a *reversal* of injunction decrees with directions to dismiss bills filed in the District Courts. *Elliott* v. *El Paso Electric Co.; Elliott* v. *Perrin; Clark* v. *Marathon Electric Co.; Beman* v. *Independent Workers of Clayton Marks & Co.; Pratt* v. *Oberman & Co.; Lyons* v. *Eagle-Picher Lead Co.*, all *supra*. The decrees of the First Circuit under consideration thus stand alone, contrary to those of every other intermediate court in the Federal judicial system.

3. The question presented is of great public importance.

The effect of the decision below is to substitute the District Court for the Board in the first instance to hear and determine questions under the Act, including particularly its applicability under the circumstances of the particular case. This ruling is subversive of all established principles of admin-

istrative law and equity jurisdiction. *White* v. *Johnson,* 282 U. S. 367, 373. It would nullify a carefully devised statutory procedure which has been sustained by this Court as valid and adequate, without even freeing the parties from injury which is incidental to every trial. It would destroy all the advantages of a body of experts who shall gain experience by length of service in dealing with a special problem. *Humphrey's Executor* v. *United States,* 295 U. S. 602, 625; *Florida* v. *United States,* 292 U. S. 1, 12. With respect to various plants of the employer at bar, it would lead to the absurd result that questions under the Act are tried in the first instance by the District Courts in the First Circuit, by the Board in the Southern District of California (*Bethlehem Shipbuilding Corp.* v. *Nylander,* 14 F. Supp. 201), and by the Board in the District of Columbia. *Bethlehem Shipbuilding Corp.* v. *Madden,* 86 F. (2d) 862 (App. D. C.), certiorari denied, March 15, 1937, No. 706.

CONCLUSION

Wherefore, it is respectfully submitted that this petition for writs of certiorari to review the judgments of the Circuit Court of Appeals for the First Circuit should be granted.

STANLEY REED,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

JUNE 1937.

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